IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR No.95 of 1996
Date of decision:22.11.2006

The Commissioner of Income Tax, Jalandhar

....Petitioner

versus

Sarwan Singh Contractor, Ludhiana

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Dr. N.L.Sharda, Advocate, for the revenue.

JUDGMENT:

Following question of law has been referred for opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh, arising out of its order dated 19.6.1995 in ITA No.520 of 1990, for the assessment year 1984-85:-

> "Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in deleting an addition of Rs.1,83,570/- made on account of cash payments in violation of the provisions of section 40A(3) of the Income Tax Act, 1961?"

The Assessing Officer rejected the books of account and assessed income by adopting net profit rate of total contract receipts. Addition was also made on account of cash payments in violation of Section 40A(3) of the Income Tax Act, 1961 (for short, 'the Act'). This was upheld by the CIT(A).

Before the Tribunal, application of gross profit rate of 10% was not challenged by the assessee but it was submitted that once assessment had been made as per estimate by applying net profit rate of 10%, there was no need to go into the entries in the books of account and addition on that account would be taking the income twice.

We have heard learned counsel for the revenue and perused the findings recorded.

We find that identical issue has been examined by this Court in ITA No.512 of 2005, **Commissioner of Income Tax (Central) Ludhiana v. Smt.Santosh Jain Prop.M/s Jain Steel Inds.Mandi Gobindgarh**, decided on 10.8.2006 and the question has been answered against the revenue and in favour of the assessee, following judgment of the Allahabad High Court in **CIT v. Banwari Lal Banshidhar,** (1998) 229 ITR 229.

Accordingly, the question referred in the present case is answered against the revenue and in favour of the assessee.

Reference is disposed of accordingly.

(Adarsh Kumar Goel)
Judge

November 22, 2006
'gs'

(Rajesh Bindal)
Judge